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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,594	03/21/2002	Masato Ikeda	00005.001198	6859
5514	7590	02/25/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			FRONDA, CHRISTIAN L	
		ART UNIT	PAPER NUMBER	
		1652		

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/088,594	IKEDA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Christian L Fronda	1652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 January 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4-8 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 4 and 5 is/are allowed.
- 6) Claim(s) 6-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 3/21/2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

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## **DETAILED ACTION**

1. The finality of the previous Office Action dated 04/06/2004 has been withdrawn in view of new rejections on claims 6-8 and 15.
2. Claims 4-8 and 15 are under consideration in this Office Action.
3. The computer readable form (CRF) of the Sequence Listing dated 01/28/2005 has been received and have been processed by the Scientific and Technical Information Center (STIC).
4. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Should applicant desire to obtain the benefit of foreign priority under 35 U.S.C. 119(a)-(d) prior to declaration of an interference, a translation of the foreign application should be submitted under 37 CFR 1.55 in reply to this action.

### ***Claim Rejections - 35 U.S.C. § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 6-8 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Duncan et al. (US Patent 6,797,509).

Claims 6-8 and 15 are drawn to an isolated DNA that hybridizes with SEQ ID NO: 2

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under stringent conditions, wherein said DNA encodes a polypeptide with transaldolase activity, vectors comprising said DNA; host cells transformed with said vector; and method of making the polypeptide by culturing said host cells, wherein said polypeptide has at least 95% amino acid sequence homology to SEQ ID NO: 4.

Dunican et al. teach an isolated DNA (SEQ ID NO: 1) that encodes a polypeptide having transaldolase activity, where the said DNA has 98.7% identity to SEQ ID NO: 2 and therefore will hybridize to SEQ ID NO: 2 under the stringent hybridizations recited in claim 2 because of this high homology to SEQ ID NO: 2 (see enclosed Alignment No.1; and entire patent especially column 5, lines 35-42, and claims 3-5).

The reference also teaches vectors and host cells and method of overexpressing the polypeptide by culturing the host cells comprising said vector (see entire document and claims).

Therefore, Dunican et al. anticipates claims 6-8 and 15 of the instant application.

US Patent 6,797,509 claims priority to US Provisional Application No. 60/142,915, filed 07/09/1999, and is considered prior art, as defined by 35 U.S.C. 102(e), because US Provisional Application No. 60/142,915 discloses and has support for the isolated DNA (SEQ ID NO: 1) that encodes a polypeptide having transaldolase activity. The nucleotide sequence of SEQ ID NO: 1 is disclosed on pp.10-15 of US Provisional Application No. 60/142,915.

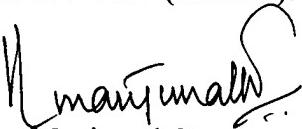
### ***Conclusion***

7. Claims 4 and 5 are allowable.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian L Fronda whose telephone number is (571)272-0929. The examiner can normally be reached Monday-Friday between 9:00AM - 5:00PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura N Achutamurthy can be reached on (571)272-0928. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.
9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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